STATE OF MICHIGAN

COURT OF APPEALS

KATRINA CANTER and EDWARD CANTER,

Plaintiffs-Appellants,

v

LEISURE DAYS TRAVEL TRAILER SALES, INC.,

Defendant-Appellee.

UNPUBLISHED
August 26, 2004

No. 247025
Genesee Circuit Court
LC No. 02-073992-NI

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition in this premises liability case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs went to defendant's place of business to shop for a trailer. Ice and snow lay on the ground. They walked through defendant's lot for twenty minutes without incident, and then drove to defendant's office. Plaintiffs noted that various sections of the lot, including some parking spaces, had been salted, but chose to park away from other vehicles. Katrina Canter slipped on ice as she exited her vehicle and fell to the ground, sustaining injuries. Plaintiffs filed suit alleging that that defendant negligently failed to maintain the premises in a reasonably safe condition and to warn of the unsafe condition. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), finding that the condition of the lot was open and obvious and that no special aspects made the condition unreasonably dangerous in spite of its open and obvious nature.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. A possessor of land may

be held liable for injuries resulting from negligent maintenance of the land. The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated, or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995).

The open and obvious danger doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Id*. at 612. Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). If special aspects of a condition make even an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect an invitee from that risk. If such special aspects are lacking, the open and obvious condition is not unreasonably dangerous. *Lugo v Ameritech Corp*, 464 Mich 512, 517-519; 629 NW2d 384 (2001).

Plaintiffs argue that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. As a general rule, and absent special circumstances, the hazards presented by ice and snow are open and obvious, and do not impose a duty on the property owner to warn of or remove the hazard. *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 4-5, 8; 649 NW2d 392 (2002). The danger presented by snow-covered ice is open and obvious where the plaintiff knew of, and under the circumstances an average person with ordinary intelligence would have been able to discover, the condition and the risk it presented. *Joyce v Rubin*, 249 Mich App 231, 239; 642 NW2d 360 (2002). Katrina Canter acknowledged that she observed ice and snow in defendant's lot, and was aware of the condition of the lot. The fact that she did not see the ice on which she slipped was irrelevant. *Novotney*, *supra* at 477. The trial court correctly found that the condition of the lot was open and obvious. *Corey*, *supra* at 6.

Plaintiffs failed to demonstrate the existence of any special aspects that made the condition unreasonably dangerous in spite of its open and obvious nature. The fact that defendant's employee fell in the lot is irrelevant given that salted parking spaces were available for plaintiffs' use. *Lugo*, *supra*. An average person with reasonable intelligence would have been able to recognize the danger presented by the condition, notwithstanding the fact that portions of the lot had been salted. *Joyce*, *supra*.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly